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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 In re DYNAMIC RANDOM ACCESS
20 MEMORY (DRAM) ANTITRUST
21 LITIGATION

Master File No. M-02-1486-PJH

MDL No. 1486

22 THIS DOCUMENT RELATES TO:

23 All Indirect Cases

24 **AMENDED STIPULATION AND**
25 **[PROPOSED] ORDER RE**
26 **SCHEDULING OF TRANSFERRED**
27 **INDIRECT PURCHASER DRAM**
28 **CASES**

1 WHEREAS, this Court is presiding over numerous indirect purchaser cases
2 concerning allegations of price-fixing in the Dynamic Random Access Memory (“DRAM”)
3 industry; and

4 WHEREAS, one such case (*Petro Computer Systems, Inc., et al. v. Micron*
5 *Technology, Inc., et al.*, Case No. C 05-02472 (“*Petro*”)) purports to assert claims on behalf of a
6 nationwide class of indirect purchasers of DRAM and under the laws of multiple states; and

7 WHEREAS, all Defendants have answered the *Petro* Complaint; and

8 WHEREAS, the Judicial Panel on Multidistrict Litigation (“JPML”) either has
9 transferred, or is in the process of transferring, additional indirect purchaser DRAM cases
10 (“Transferred Indirect Purchaser DRAM Cases”) to this Court; and

11 WHEREAS, as a result, absent further stipulation, Defendants will need to file a
12 series of answers and/or motions in response to the complaints in the Transferred Indirect
13 Purchaser DRAM Cases; and

14 WHEREAS, on November 7, 2005, this Court entered an Order Granting Motions
15 to Dismiss and Denying Jurisdictional Discovery with respect to certain Defendants in the North
16 Carolina, Tennessee, and Vermont cases (the “November 7 Order”); and

17 WHEREAS, absent stipulation, Plaintiffs subject to the November 7 Order intend
18 to file a Rule 54 motion seeking entry of final judgment so they may appeal that order to the
19 Ninth Circuit; and

20 WHEREAS, certain Defendants have filed motions to dismiss for lack of personal
21 jurisdiction, and all Defendants have joined in a motion for lack of standing, in one Transferred
22 Indirect Purchaser DRAM Case (*Arps v. Micron Technology, Inc., et al.* (No. C 05-04076 PJH)
23 (“*Arps*”)); and

24 WHEREAS, the Court has scheduled a hearing on the *Arps* motions for January
25 25, 2006, and further briefing in the *Arps* case in January 2006; and

26 WHEREAS, certain Defendants have also filed motions to dismiss in three other
27 Transferred Indirect Purchaser DRAM cases, *McKinnon v. Micron Technology, Inc., et al.* (No.
28 C 05-3492 PJH) (“*McKinnon*”), *Maher v. Elpida Memory, Inc., et al.* (No. C 05-3629 PJH),

1 (“*Mahe*”) and *Smith v. Micron Technology Inc., et al.* (No. C 05-3493 PJH) (“*Smith*”), and no
 2 briefing schedule or hearing date has been set for those motions;¹ and

3 WHEREAS, absent stipulation, beginning in January 2006, and as responsive
 4 pleadings become due, many Defendants will file motions to dismiss (either for lack of personal
 5 jurisdiction, or on standing/Rule 12(b)(6) grounds, or both) in other Transferred Indirect
 6 Purchaser DRAM Cases that already have been or will be transferred to this Court, including
 7 *Bishop v. Micron Technology, Inc., et al.* (No. C 05-5055 PJH) (“*Bishop*”), *Carrero v. Elpida*
 8 *Memory, Inc., et al.* (No. C 05-4537 PJH) (“*Carrero*”), *Rush v. Micron Technology, Inc., et al.*
 9 (No. C ____ - ____ PJH (not yet assigned)) (“*Rush*”), and *Stobbe v. Micron Technology Inc., et al.*
 10 (No. C 05-5040 PJH) (“*Stobbe*”); and

11 WHEREAS, all parties and counsel in the indirect purchaser cases before this
 12 Court wish to avoid duplicative discovery and *seriatim* motion practice when practicable and to
 13 conduct the litigation in an efficient manner that will conserve scarce judicial resources; and

14 WHEREAS, on December 16, 2005, the parties submitted a Stipulation and
 15 Proposed Order re Scheduling of Transferred Indirect Purchaser DRAM Cases; and

16 WHEREAS, on January 3, 2006 the Court issued an Order approving the
 17 December 16 Stipulation “insofar as it stays all further action on indirect purchaser cases other
 18 than *Petro*,” and inviting the parties to submit a revised stipulation clarifying the treatment of
 19 certain pending motions;

20 **NOW, THEREFORE**, it is hereby stipulated and agreed as follows by the parties
 21 through their respective undersigned counsel:

22 1. All proceedings and pre-trial deadlines, including, but not limited to,
 23 deadlines to move in response to or answer complaints, in the Transferred Indirect Purchaser
 24 DRAM Cases (either those already before this Court (including *Arps*, *Bishop*, *Carrero*,

25
 26 ¹ The Court’s January 3, 2005 Order suggests that no motions are pending in *McKinnon*, *Mahe*,
 27 or *Smith*. See *id.* at 2 n.1. The parties respectfully note that motions to dismiss were filed in
 28 these cases. They were filed prior to the cases’ transfer to this Court, which may explain why the
 Court has had some difficulty locating them on its dockets.

1 *McKinnon, Maher, Rush, Smith, and Stobbe*) or those subsequently transferred to this Court) are
2 hereby stayed until further order of the Court.

3 2. In those Transferred Indirect Purchaser DRAM Cases where Defendants
4 have not already moved or answered, Defendants' Rule 12 defenses (including, without
5 limitation, personal jurisdiction defenses), and Plaintiffs' arguments regarding those defenses,
6 are expressly preserved and are not waived during the pendency of this stay. Defendants'
7 participation in the *Petro* case, or in other indirect purchaser DRAM cases before the Court that
8 are not subject to the stay set forth in this Stipulation and Order, will not be deemed to be a
9 waiver of any personal jurisdiction defense in the Transferred Indirect Purchaser DRAM Cases.

10 3. By participating in the *Petro* case and agreeing to stay all Transferred
11 Indirect Purchaser DRAM Cases, Defendants are not waiving any claim or defense available to
12 Defendants in that case.

13 4. Where Defendants have already moved to dismiss in Transferred Indirect
14 Purchaser DRAM Cases, Defendants withdraw those motions without prejudice to the right to re-
15 file them at a later date if the stay is lifted, effective as of the date of entry of the Proposed Order.
16 Where Defendants have already answered in Transferred Indirect Purchaser DRAM Cases, those
17 answers will remain pending and on file with the Court.

18 5. The hearing on the *Arps* motions to dismiss is taken off calendar.

19 6. Any deadline for Plaintiffs to file a Rule 54 motion regarding the
20 November 7 Order is stayed. If and when this stay is lifted, Plaintiffs shall have 30 days (or such
21 other time period as ordered by the Court) to file a Rule 54 motion regarding the November 7
22 Order. If Plaintiffs file such a motion within that time period, Defendants will not assert that the
23 motion is untimely. The parties' other arguments regarding any appeal of the November 7 Order
24 are hereby expressly preserved.

25 7. By entering into this Stipulation, no party waives any objection, defense or
26 argument it otherwise has.

27 8. The terms of this Stipulation also apply to indirect purchaser DRAM
28 cases, if any, subsequently filed as original actions in this Court.

9. The terms of this Stipulation expressly do not apply to *Centerprise International, Ltd. v. Micron Technology, Inc., et al.* (No. C 05-3026 PJH). The hearing currently scheduled for the *Centerprise* case will remain on calendar.

10. Any party to this Stipulation may seek to lift the stay imposed hereby or modify the terms of this Stipulation and Order upon giving 30 days notice to the Court and all other parties. If the stay is lifted, any defendant that has not yet answered the complaint in the affected cases shall file its answers or otherwise respond, including re-filing any previously-filed motions, within 30 days of the order lifting the stay. Neither the language nor the entry of this Order shall constitute a presumption in favor of or against continuing the stay or lifting the stay following the notice described above.

IT IS SO STIPULATED.

INDIRECT-PURCHASER PLAINTIFFS'

COUNSEL:

Dated: January 5, 2006

By: /s/ by Howard M. Ullman per authorization
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 6, 2006



Judge Phyllis J. Hamilton